

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



UNITED STATES OF AMERICA

v

MICHAEL R. BERKLEY

Case No 3:22-cr-101

MOTION TO DISMISS INDICTMENT

COMES NOW, the Defendant, Michael Berkley, pro se, Respectfully request this Court to immediately dismiss the current indictment and immediately release me from incarceration based on prosecution misconduct and government misconduct.

I have been supplied with discovery in the current case, specifically emails "Allegedly" sent back and forth between United States Postal Inspector Stefan Hinds and representatives of Online Check Writer. com. Displayed in these emails are factual evidence that absolutely shows that the emails have been fabricated and forged, which are "Severe" Constitutional Violations to the defendants due process and can also be construed to be actions by Government officials that are subject to Criminal prosecution.

The Supreme Court has held that "in extreme cases, governmental misconduct may be so outrageous as to require dismissal of charges against a defendant under the Due Process Clause of the Fifth Amendment" United States v. Toth, 91 F.3d 136 (4th Cir 1996) (citing United States v. Russell, 411 U.S. 423, 432 (1973))

To constitute a due process violation, the Fourth Circuit has explained, "the government's conduct must be so outrageous as to shock the conscience of the Court" and "appellate courts have over time continued to demonstrate a high shock threshold in the presence of extremely unsavory government conduct" United States v. Osborne, 935 F.2d 32, 36 (4th Cir 1991).

The conduct by the government and its agents clearly show not only a direct disregard for the defendants Constitutional Rights but also for the law itself and is a direct bad faith attempt to secure a conviction based on fraudulent and fabricated documents which shall subject the government not only to sanctions but to Criminal Charges. This behavior is "shocking" (emphasis added) and exceeds the high threshold for government misconduct.

WHEREFORE, the Defendant ask that the Court schedule an emergency hearing and dismiss the indictment with prejudice and immediately release the defendant from Northern Neck Regional Jail.

Respectfully Submitted

Michael Berkley